



ASSOCIATION of
FISH & WILDLIFE
AGENCIES

The voice of fish and wildlife agencies

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February 13, 2009

Easement Programs Division
Natural Resources Conservation Service
Healthy Forests Reserve program Comments
PO 2890
Room 6819-S
Washington, DC 20013

Dear Sir or Madam:

RE: Federal Register Document INRCS-2009-0005-0001, Proposed Rule affecting changes to the Healthy Forest Reserve Program

The Association of Fish and Wildlife Agencies (Association) appreciates the opportunity to comment on the proposed rule affecting implementation of the Healthy Forest Reserve Program as provided by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The Association represents the collective perspectives of the state fish and wildlife agencies, and promotes sound management and conservation. All fifty states are members.

There are 750 million acres of forest land in the United States and about 350 million acres of those are in private, non-industrial ownership. These forests produce wood products such as lumber for construction and the wood industry contributes to the economy through hundreds of thousands of jobs. In addition, forest lands are increasingly important for carbon sequestration and climate change mitigation as well as a potential source of woody biomass to address the nation's future energy needs. These forests also provide important and irreplaceable habitat for wildlife. These species include neotropical birds that rely on blocks of forestland for resting/feeding habitat during migration, forest interior species that are sensitive to fragmentation of contiguous forest and species associated with forest edge. Forested watersheds are important to groundwater recharge and filter run-off to benefit aquatic species that depend on quality water in streams, rivers and lakes. In addition, forested landscapes provide recreational opportunities such as hunting, fishing, wildlife viewing, hiking, camping, sightseeing and other outdoor activities that stimulate the economy and provide jobs for the associated industries.

The health of the nation's forests is important for many reasons. It is equally important that forest lands be managed to sustain their diverse native plant communities which are key to the diversity of products and benefits they provide. The Healthy Forests Reserve Program can help ensure that the most diverse and irreplaceable forests are conserved for future generations, and we are pleased that Natural Resources Conservation Service (NRCS) is taking steps to continue

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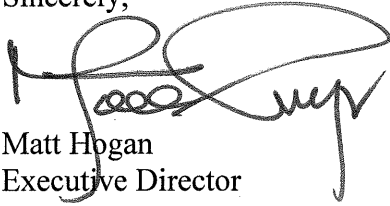
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the program in accordance with the 2008 Farm Bill. We would like to thank the NRCS for shepherding the program and for the opportunity to improve native forest habitats across the country.

Again, thank you for your consideration of our recommendations for the implementation of the Healthy Forest Reserve Program as authorized in the 2008 Farm Bill. Please do not hesitate to contact Mrs. Jen Mock Schaeffer at jenmock@fishwildlife.org or at 202-624-7890 with any questions about our comments, or if we can further assist with this provision.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Hogan", with a large, stylized loop at the end.

Matt Hogan
Executive Director

**Healthy Forest Reserve Program
Comments on Proposed Rule
Submitted by the Association of Fish and Wildlife Agencies**

General Comments on the Rule:

Throughout the interim rule, there are references to coordinating, consulting or conferring with FWS and NMFS. All of these references should **include the appropriate state fish and wildlife agency** along with FWS and NMFS. The state fish and wildlife agencies have statutory authority for management of all wildlife within the state and are able to provide the latest information regarding state species of conservation concern, related conservation or management needs, and important considerations for landowners. In addition, many threatened and endangered species are subject to joint-jurisdiction among these three agencies. Therefore, all three should be included as part of coordination or consultation.

Of great concern to our members is the designation of hunting and fishing as a “compatible use” instead of reserved rights of the landowner. The regulation of hunting and fishing activities, seasons and bag limits are the statutory responsibility of the state fish and wildlife agencies and the US Fish and Wildlife Service. These state and federal agencies promulgate hunting, fishing and trapping regulations with full consideration of the needs of wildlife, including species that are the focus of recovery efforts. Therefore, hunting and fishing, as well as trapping, must be **reserved rights of the landowner** in all NRCS programs and easement deeds.

Specific Comments Regarding the Proposed Rule:

Page 1964, Section 625.1 Purpose and Scope – We support continuation of the purpose of the program as reflected in sub-item (a) to enhance forest ecosystems on private lands, the program objectives in sub-item (b) (1) to promote the recovery of endangered and threatened species, and sub-item (b) (2) to ‘improve plant and animal biodiversity.’ However, we suggest clarifying these statements by adding that the focus is on native forest lands. It is difficult to conserve threatened and endangered species if the focus of their habitats is not on native plant communities. Clarifying that the focus is on native forest lands will help keep the program headed in a direction that does not result in unintended impacts on endangered or threatened species through the introduction of exotic, non-native plant or animal species and brings clarity to the purpose and scope of the program. Furthermore, this verbiage is consistent with the definition of “restoration” in the rule that includes “native and natural communities.”

- **Recommendation:** Specifically, insert the word “**native**” before “forest ecosystems” in 625.1 (a) and before “plant and animal biodiversity” in 625.1 (b) (2).

Page 1964, Section 625.2 Definitions:

- **Biodiversity** -- To provide clarity and consistency from program-to-program, we recommend clarifying the definition of **biodiversity** by rewording it as follows:
 - **Recommendation:** Biodiversity means the variety and variability among living organisms **native to the ecological sub-region and ecological complex.**

Without this addition, the definition could include feral hogs or other non-native species that are destructive or detrimental to other sensitive species as well as native forest restoration efforts and activities.

- **Forest Ecosystem** – The definition for “forest ecosystem” would benefit by using the word ‘native’ to characterize the “plants, animals and microorganisms interacting”. Therefore, we recommend that the definition be reworded as follows:
 - **Recommendation:** Forest ecosystem means a dynamic set of living organisms, including **native** plants, animals, and microorganisms interacting among themselves and with the environment in which they live. ...
- **Restoration** – We support the definition of “restoration” used in this rule which includes the terms “native and natural plant communities.” In order for this program to be successful and foster the recovery of threatened, endangered and other sensitive species, it is critical that the focus of restoration efforts includes native plants.
- The term “**compatible use**” is not listed in the definition section yet the term is used throughout the rule. For clarity and consistency, we recommend including the following definition of compatible use in the rule:
 - **Recommendation:** *Compatible use* includes those activities, uses or measures that do not interfere with the timely implementation or full effectiveness of conservation practices as described in the restoration plan.

Page 1965, Section 625.3 Administration, sub-item (e) – Coordination in program implementation.

- We appreciate the NRCS coordinating with the FWS throughout program implementation. However, the NRCS should also **coordinate with the appropriate state fish and wildlife agency**, along with FWS and NMFS, with respect to aspects of the programs that relate to state-listed species for which the state has management authority and responsibility. State fish and wildlife agencies are the experts on state-listed species and maintain critical information regarding status, location, long-term prospects for recovery and activities that would benefit these species. Neither conservation of federally-listed nor state-listed species should be left to chance as this program is implemented, and to optimize success for restoration activities of both federally and state-listed species, the state fish and wildlife agency must be included in coordination and program implementation.
 - **Recommendation:** Insert “**with the appropriate state fish and wildlife agency**” after “NMFS” in the first sentence of 625.3(e).

Page 1966, Section 625.4 Program Requirements:

- **(a)(1)** –In order for the program to be of greatest restoration utility and success, it is important to secure the longest possible protection for the highest priority native forest lands

for which permanent easements work best. We support expending **no less than 60%** of funding of the Healthy Forest Reserve Program **for purchasing permanent easements**.

- **(c)(2)(i) and (ii)** – The capability of the land does not reflect the recoverability of a species unless the appropriate conservation practices and management actions are implemented. Additionally, it is important that direct benefits to the target species be realized during the contract period for the program to be effective. We support the statutory language as used in the summary portion of this rule regarding the purpose and eligibility of the program, and we recommend the following changes to these sections:
 - **Recommendation for (i):** Within the contract period, private land which will restore, enhance, or otherwise measurably increase the likelihood of recovery of a species listed as endangered or threatened under Section 4 of the ESA; or
 - **Recommendation for (ii):** Within the contract period, private land of which will restore, enhance, or otherwise measurably improve the well-being of species that are not listed as endangered or threatened under Section 4 of the ESA but are candidates for such listing, state-listed species, or is a species identified by the Chief for special consideration for funding.

Page 1966, Section 625.5 Application Procedures (a) Sign-up process.

- We recommend the process include consultation with other state and federal agencies as a necessary step rather than leaving such consultation discretionary. It is difficult to understand how a meaningful proposal could be submitted to the Chief of NRCS without involving the appropriate state or federal agencies. Such required consultations would facilitate coordination of priorities and maximize conservation opportunities, and hence we recommend the second sentence in this section be changed to read as follows:
 - **Recommendation:** The State Conservationist **shall** consult with other agencies at the State, Federal, and local levels to develop proposals.

Page 1966, Section 625.6 Establishing priority for enrollment in HFRP (a) Ranking considerations.

- As per previous comments, NRCS coordination with the state fish and wildlife agency in regard to state-listed species should be a requirement in the ranking process, and we recommend (a) be changed to read as follows.
 - **Recommendation:** Based on the specific criteria set forth in a sign-up announcement and the applications for participation, NRCS, in coordination with **FWS, NMFS, and the appropriate State fish and wildlife agency regarding State-listed species or species of special concern**, may consider the following factors to rank properties:

Page 1967, Section 625.8 Compensation for easements and 30 year contracts.

- For permanent easements, the Uniform Standards for Professional Appraisal Practice (USPAP) has been used and resulted in fair compensation in return for the easement in some parts of the country. However, the Yellow Book appraisal process (Uniform Standards for

Federal Land Acquisition – UASFLA) should not be used; it has not worked well on forested wetlands enrolled in WRP as it does not take into account how the land might be used when converted to other uses. Healthy Forest Reserve easements or contracts are valuable for their protections against the real and reasonable conversion pressures that are likely to develop. Implementing valuation methods that NRCS easement staff are accustomed to using may ease workload burdens and having the flexibility to use the methodology that works best within a particular landscape is vital to the success of the program. Therefore, we recommend the following appraisal processes be used for the HFRP.

- **Recommendation:** We recommend that NRCS use the same appraisal processes for the HFRP as those being used for the WRP as of January 2009. This will increase consistency of valuations across easement programs and hopefully ease confusion and workload burdens with NRCS staff and appraisers.
- We commend NRCS on the language written in Section 625.8 (f) regarding Environmental Services Credits. It is clear, thorough, and appropriate.
 - **Recommendation:** We strongly support maintaining the language as written in Section 625.8 (f) with respect to Environmental Service Credits for Conservation Improvements. We further recommend that this **exact** language be used with all other conservation programs, as appropriate, to foster consistency in implementation across programs.

Page 1968, Section 625.11 Easement participation requirements, (b) (2).

- The rule designates hunting and fishing as a “compatible use” instead of a reserved right of the landowner. The regulation of hunting and fishing activities, seasons and bag limits are the statutory responsibility of the state fish and wildlife agencies and the US Fish and Wildlife Service. These state and federal agencies promulgate hunting, fishing and trapping regulations with full consideration of the needs of wildlife, including species that are the focus of recovery efforts. Therefore, hunting and fishing, as well as trapping, must be **reserved rights of the landowner** in all NRCS programs and easement deeds. Additionally, prescribed fire can be an important tool in accordance with and in the fulfillment of HFRP goals and objectives such as restoration, protection, enhancement, maintenance, and management of habitat and forest ecosystem functions and values yet this term is not included as a compatible use. Furthermore, forests are not typically hayed, thus periodic haying is not a relevant compatible use for the HFRP. However, some silvicultural practices can be consistent with the restoration plan and program goals and objectives and should be included as a compatible use. We recommend rewording this section to read as follows:
 - **Recommendation:** **The right to permit compatible uses by the landowner of the easement area, which may include such activities as use of prescribed fire, grazing, and silvicultural practices that are consistent with the restoration plan and encourage forest enhancement and health, if such use is consistent with the long-term protection and enhancement of the purposes for which the easement was established;**

Page 1969, Section 625.12 30-year contracts, (b)(2).

- The rule designates hunting and fishing as a “compatible use” instead of a reserved right of the landowner. The regulation of hunting and fishing activities, seasons and bag limits are the statutory responsibility of the state fish and wildlife agencies and the US Fish and Wildlife Service. These state and federal agencies promulgate hunting, fishing and trapping regulations with full consideration of the needs of wildlife, including species that are the focus of recovery efforts. Therefore, hunting and fishing, as well as trapping, must be **reserved rights of the landowner** in all NRCS programs and easement deeds. Additionally, prescribed fire can be an important tool in accordance with and in the fulfillment of HFRP goals and objectives such as restoration, protection, enhancement, maintenance, and management of habitat and forest ecosystem functions and values yet this term is not included as a compatible use. Furthermore, forests are not typically hayed, thus periodic haying is not a relevant compatible use for the HFRP. However, some silvicultural practices can be consistent with the restoration plan and program goals and objectives and should be included as a compatible use. We recommend rewording this section to read as follows:

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Page 1969, Section 625.13 The HFRP restoration plan development and landowner protections.

(a) State fish and wildlife agencies are important partners to include in the development of HFRP restoration plans, as they will be able to provide the latest information regarding state-listed species, species of conservation concern and their related conservation or management needs as well as measures or considerations that may be necessary to protect or assure landowners participating in the program. To facilitate better coordination among agencies and in the best interest of landowners, we recommend rewording (a) as follows.

- **Recommendation:** The development of the HFRP restoration plan shall be made through an NRCS representative, who shall confer with the program participant and with the FWS, NMFS, and the state wildlife agency to help address state species of conservation concern in restoration plans.

(c) We commend NRCS for including carbon sequestration as an aspect of the program. However, program constraints should be in place to prevent the conversion of native forest land to plantings of non-native woody species that will not provide habitat for threatened or endangered species even though these woody species may maximize carbon sequestration. Rather, the program should operate to optimize carbon sequestration through management that maintains diverse and high quality native forest land. We recommend that the second sentence in (c) be reworded as follows.

- **Recommendation:** “...To the extent practicable, eligible practices and measures will improve biodiversity and **optimize the sequestration of carbon through**

management that maintains diverse and high quality native forest lands to accomplish the goals of the restoration plan.”

(d) (2) (iv) – It is common for the state fish and wildlife agency or possibility or other entity to be a permit holder or party of a Safe Harbor Agreement (SHA) or Candidate Conservation Agreement with Assurances (CCAA). Consequently, it is important for the landowner to coordinate terminated agreements with FWS, NMFS, and all parties of the agreements. Hence, we recommend rewording this section as follows.

- **Recommendation:** “... is terminated, the landowner will be responsible to notify and coordinate with **FWS, NMFS, and the state fish and wildlife agency or any other relevant party (e.g., nongovernmental organization, etc.) to the specific SHA or CCAA**, as appropriate, for any modifications related to the SHA or CCAA.”

Page 1970, Section 625.14 Modification of the HFRP restoration plan.

- State fish and wildlife agencies are important partners to include in the modification of HFRP restoration plans, as they will be able to provide the latest information regarding state-listed species, species of conservation concern and their related conservation or management needs as well as measures or considerations that may be necessary to protect or assure landowners participating in the program. To facilitate better coordination among agencies and in the best interest of landowners, we recommend rewording (a) as follows.
 - **Recommendation:** We recommend that the second sentence should be reworded to “NRCS may obtain and receive input from the landowner and coordinate with **FWS, NMFS, and the state fish and wildlife agency** to determine whether a modification is justified.”
 - **Recommendation:** We recommend that the last sentence of Section 625.14 be reworded to “Modifications to the HFRP restoration plan...will require agreement from the landowner, **FWS, NMFS, or the state fish and wildlife agency**, as appropriate, ...”

Page 1970 Section 625.15 Transfer of land, (b)(4).

- State fish and wildlife agencies are important partners to include with respect to the transfer of land when a Safe Harbor Agreement (SHA) or Candidate Conservation Agreement with Assurances (CCAA) is involved, as the state fish and wildlife agency will be able to provide the latest information regarding state species of conservation concern, related conservation or management needs, and important considerations for landowners. Furthermore, the state fish and wildlife agency or other party may be a party of the SHA or CCAA permit and should receive such notification of transfer of land.
 - **Recommendation:** We recommend that the sentence in Section 625.15 (b) (4) be reworded to “If a SHA or CCAA is involved, the previous and new landowners may coordinate with **FWS, NMFS, and the state fish and wildlife agency or any other relevant party (e.g., nongovernmental organization, etc.) of the specific SHA or CCAA**, as appropriate, to transfer the agreement and associated permits and assurances.”